

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA BOARD OF DENTISTRY

In the Matter of
Gary L. Jacobson, D.D.S.
License No. D6977

ORDER FOR IN CAMERA
INSPECTION

The above matter is pending before the undersigned Administrative Law Judge on a Motion to Compel filed by the Respondent. Thomas C. Vasaly, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103-2106, appeared on behalf of the Complaint Committee of the Minnesota Board of Dentistry (hereinafter referred to as "the Committee"). Ronald S. Rosenbaum, Attorney at Law, Tilton & Rosenbaum, 101 East Fifth Street, Suite 2220, St. Paul, Minnesota 55101, appeared on behalf of the Respondent, Dr. Gary L. Jacobson. The record with respect to the motion closed on February 20, 1996.

Based upon all of the files, records, and proceedings herein, and for the reasons discussed in the Memorandum below, IT IS HEREBY ORDERED as follows:

1. The Committee's List of Documents Withheld dated November 9, 1995, and January 8, 1996, did not fully comply with the directive of the Administrative Law Judge in her letter dated November 2, 1995, that the Complaint Committee should provide the Respondent with "a log briefly identifying the nature of the material that is not being disclosed (e.g., 'Letter/memorandum dated _____ addressed to _____') and the nature of the privilege that is claimed." The Committee's amended lists of withheld documents filed in connection with this motion are sufficiently detailed to comply with the November 2, 1996, directive. The Committee should not be deemed to have waived its claims of privilege in this matter.

2. In the interests of clarity, the Committee shall supplement its Second Amended List of Withheld Documents by Tuesday, March 26, 1996, by (1) noting the names of the author(s) and addressee(s) of each document, and (2) generally describing the nature of each document, if it is possible to do so without revealing the privileged information sought to be protected.

3. Because the October 26, 1995, Order issued by the Administrative Law Judge did not specifically require disclosure of the Board's administrative files pertaining to the Respondent or the Board's research files on general topics relating to the issues in this proceeding, the Respondent should seek such information in a separate discovery request.

4. An in camera inspection by an Administrative Law Judge is necessary to evaluate the discoverability of the documents sought by the Respondent in his Motion to Compel.

5. By 4:30 p.m. on Tuesday, March 26, 1996, the Committee shall produce to Administrative Law Judge George A. Beck for an in camera inspection all documents withheld from the Respondent on the grounds of privilege, along with a copy of the supplemental list of withheld documents prepared in accordance with paragraph 2 above. Copies of documents withheld on the grounds that they are duplicates of documents already provided to the Respondent need not be submitted for in camera review. Judge Beck will determine whether the documents are protected by the work product doctrine or the attorney-client or agency deliberative privileges, whether the documents contain confidential or not public information relating to other individuals, whether purely factual material reasonably can be separated without compromising privileged or confidential portions of documents, and whether the Respondent has made a sufficient showing of substantial need and undue hardship to obtain access to the requested information.

Dated this 19th day of March, 1996.

s/ Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge